REMARKS

I. Introduction

Claims 1, 2 and 4-12 are pending in the present application. Claims 1, 8, 10 and 12 have been amended. In view of the following remarks, it is respectfully submitted that all of the presently pending claims are in allowable condition.

II. Rejection of Claims 1, 2 and 4-12 under § 102(b)

Claims 1, 2 and 4 to 12 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent 6,330,870 ("Inoue"). Applicants respectfully submit that the rejection should be withdrawn for at least the following reasons.

To anticipate a claim under § 102(b), a single prior art reference must identically disclose each and every claim element, ***arranged exactly as in the claim***. See Lindeman Machinenfabrik v. American Hoist and Derrick, 730 F.2d 1452, 1458 (Fed. Cir. 1984). If any claimed element is absent from a prior art reference, it cannot anticipate the claim. See Rowe v. Dror, 112 F.3d 473, 478 (Fed. Cir. 1997). Additionally, not only must each of the claim limitations be identically disclosed, an ***anticipatory reference must also enable a person having ordinary skill in the art to practice the claimed invention***, namely the inventions of the rejected claims, as discussed above. See Akzo, N.V. v. U.S.I.T.C., 1 U.S.P.Q.2d 1241, 1245 (Fed. Cir. 1986). To the extent that the Examiner may be relying on the doctrine of inherent disclosure for the anticipation rejection, the Examiner must provide a "basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristics necessarily flow from the teachings of the applied art." (See M.P.E.P. § 2112; emphasis in original; see also Ex parte Levy, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990)).

Amended independent claim 1 recites, in relevant parts, a method for controlling a camshaft control device in a start-up operation of an internal combustion engine, . . . "the camshaft control device including a locking position, the method comprising: determining, in the start-up operation of the internal combustion engine, whether there is an adaptation of the camshaft to the crankshaft so that the phase angle of the camshaft with respect to the crankshaft may be determined; . . . wherein, **when there is no release command and the adaptation has not occurred in the start-up operation of the internal combustion engine**, the camshaft control device is activated so that **the camshaft control**

device assumes a predefinable reference position, and wherein **the reference position is selected in such a way that an idling operation of the internal combustion engine is enabled**." Independent claims 8 and 10 have been amended to recite substantially similar limitations. In accordance with the present claimed invention, in a start-up of an engine, when neither a release command nor an adaptation of the camshaft has occurred, it is ensured that the camshaft is driven in a reference position under all circumstances, which reference position enables idling operation of the engine. While the Examiner cites col. 13, l. 4-12 of Inoue as teaching "varying the valve timing for various engine speeds to include idling," this cited section of Inoue actually relates to measures performed during a stopping operation of the engine: "**after the engine stop was instructed**, . . . the engine speed . . . goes down to lower the oil pressure," (col. 13, l. 2-4), and "[i]f the engine speed is in the state capable of idling, however, the advance angle control of the crankshaft phase can be made by the oil pressure." (Col. 13, l. 4-7). Accordingly, when viewed in proper context of the sentence immediately preceding the cited section of col. 13, l. 4-12, it is clear that the cited section of col. 13, l. 4-12 does not have any relevance to measures performed **during a start-up of the engine**. In any case, as noted above, the cited section of Inoue merely indicates that "[i]f the engine speed is in the state capable of idling, . . . the advance angle control of the crankshaft phase can be made," and there is no suggestion that "the camshaft control device is activated so that **the camshaft control device assumes a predefinable reference position,** and wherein **the reference position is selected in such a way that an idling operation of the internal combustion engine is enabled**."

For at least the foregoing reasons, independent claims 1, 8 and 10, as well as their dependent claims 2, 4-7, 9, 11 and 12, are allowable over Inoue. Withdrawal of the anticipation rejection of pending claims 1, 2 and 4-12 is respectfully requested.

CONCLUSION

In view of the above remarks, it is respectfully submitted that all of the presently pending claims are allowable. All issues raised by the Examiner having been addressed, an early and favorable action on the merits is earnestly solicited.

Respectfully submitted,

KENYON & KENYON LLP


(R. No. 36,197)

Dated: May 8, 2006

By: JONG LEE for Gerard Messina

Gerard A. Messina
Reg. No. 35,952
One Broadway
New York, NY 10004
(212) 425-7200

CUSTOMER NO. 26646
PATENT & TRADEMARK OFFICE